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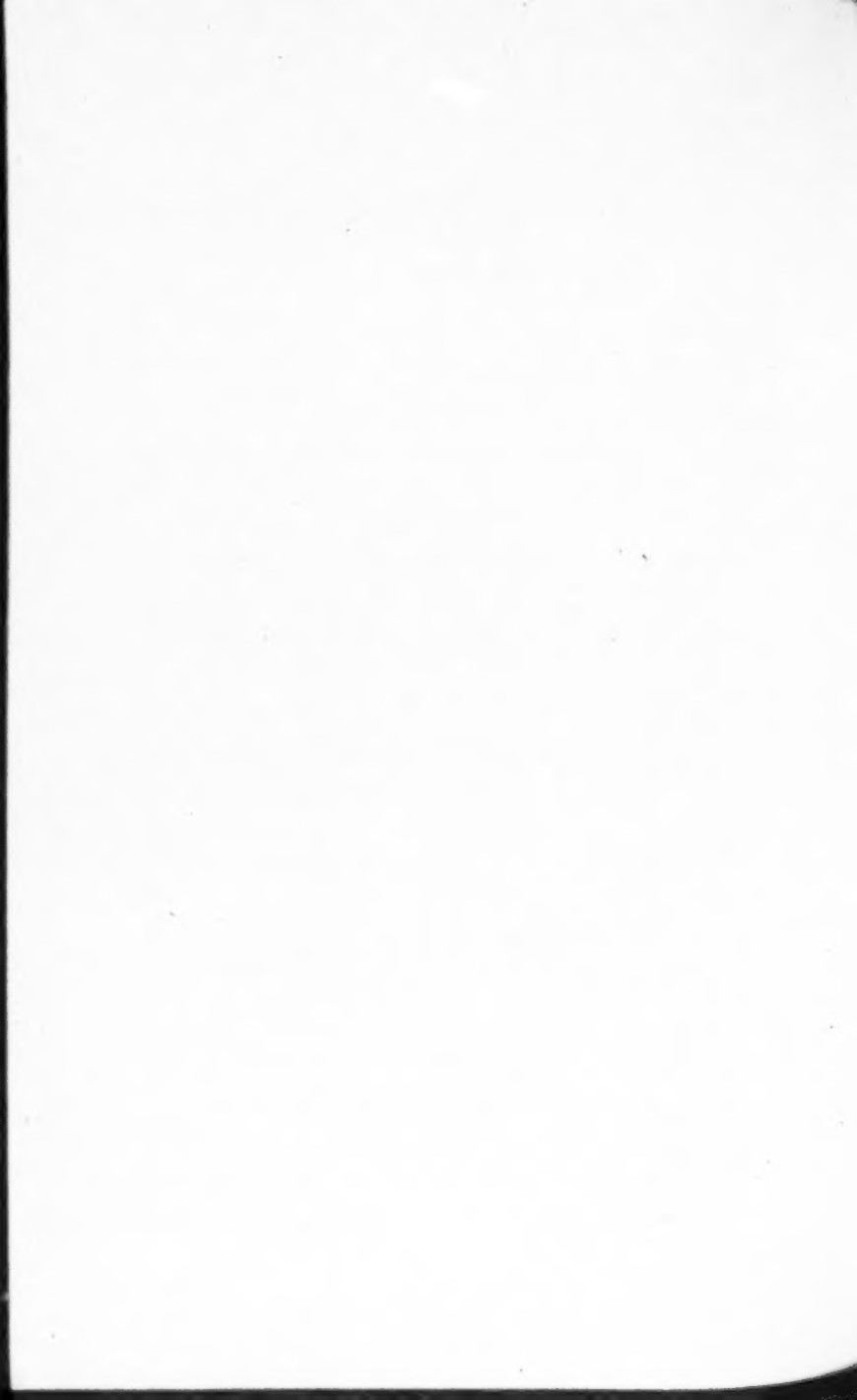
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# **In the Supreme Court of the United States**

OCTOBER TERM, 1946

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No. 859

**JULIUS HARTMANN, AS EXECUTOR UNDER THE LAST  
WILL AND TESTAMENT OF ANNIE C. GRUN, DE-  
CEASED, PETITIONER**

*v.*

**THE UNITED STATES**

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT  
OF CLAIMS**

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## **OPINION BELOW**

The opinion of the Court of Claims (R. 53-55) is reported at 106 C. Cls. 686.

## **JURISDICTION**

The judgment of the Court of Claims was entered on May 6, 1946 (R. 55-56). Petitioner's motion to vacate the judgment and for a new trial was overruled on October 7, 1946 (R. 56). The petition for a writ of certiorari was filed on January 6, 1947. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

### QUESTION PRESENTED

Whether a Swiss citizen and resident, who in 1930 became the holder of "gold clause" United States Liberty Bonds, issued in 1917 and payable in 1932 or after, is entitled to receive from the United States an amount in legal tender currency in excess of the face amount of the bonds which she received on redemption of the bonds in 1935.

### STATUTES, ORDERS, AND REGULATIONS INVOLVED

Public Resolution No. 10, approved June 5, 1933, c. 48, 48 Stat. 112, is set forth in the Appendix, *infra*, pp. 10-12. The other monetary legislation of 1933 and 1934, concerned with the regulation of the value of all coins and currency, with "gold clause" obligations, and with reservations upon the use of gold coin (Act of March 9, 1933, c. 1, 48 Stat. 1; Act of May 12, 1933, c. 25, 48 Stat. 51; Gold Reserve Act of 1934, c. 6, 48 Stat. 337), and the pertinent orders and regulations, were set forth in the Appendix to the Government's brief filed in Nos. 471, 472, 531, and 532, October Term, 1934. In view of their length, they will not be reprinted here.

### STATEMENT

Petitioner's original petition in the Court of Claims was filed on December 27, 1935 (R. 1).<sup>1</sup> The

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<sup>1</sup> For this reason, petitioner's suit is not barred by the Joint Resolution of August 27, 1935, 49 Stat. 938, 939, withdrawing the consent of the United States to suit where the claimant asserted against it a right, privilege or power "upon any

amended petition, filed March 4, 1937 (R. 1), alleged that petitioner, a Swiss citizen and resident, was bringing suit as executor under the last will and testament of one Annie C. Grun, also a Swiss citizen and resident (R. 1-2),<sup>2</sup> for damages asserted to have been suffered through refusal of the United States to fulfill the gold clause obligation of certain of its securities. Mrs. Grun became the holder, in 1930, of United States First Liberty Loan 3½% Bonds in the principal amount of \$1,420,000, issued in 1917 and payable in 1932 or thereafter (R. 2-3), and she and her executor retained possession of these bonds in Switzerland until June 15, 1935, when the bonds were called by the United States pursuant to their terms and redeemed at their face value in then legal tender currency (R. 8). Prior to such redemption, the claimant made repeated demands on the United States for payment of the principal and interest of the bonds in gold coin of 1917 weight and fineness, or the equivalent, but the United States announced its intention to refuse to make such payment (R. 7-8). Petitioner thereafter surrendered the bonds, pursuant to the call, and received their face value in legal tender, apparently without further protest (R. 8). The petition in the court below goes on

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gold-clause securities of the United States or for interest thereon," except as to "any suit heretofore commenced or which may be commenced by January 1, 1936."

<sup>2</sup> It was also alleged that Mrs. Grun was not, at any relevant time, "engaged in business in the United States" (R. 2).

to allege that in 1917 and continuously to January 31, 1934, one gold dollar was equal at par to approximately 5.18 Swiss Gold Francs, but that after that date "the standard unit of monetary value of one dollar of the United States became, and still remains, equal at par to approximately 3.09 Swiss Gold Francs" (R. 8). For this reason it is alleged that redemption at face value in 1935, instead of at the full "equivalent" of the 1917 gold dollar, caused a substantial loss to the claimant, amounting in all to \$1,053,132, for which suit is brought. The cause of action is one for breach of contract, and the claim rests on the asserted unconstitutionality of Public Resolution No. 10 forbidding payment of the bonds other than at their face value in current legal tender, as well as the invalidity of the other applicable monetary legislation of 1933 and 1934.

Respondent moved to dismiss the amended petition below on the ground that the facts alleged therein were not sufficient to state a cause of action (R. 20-21).<sup>3</sup> The Court of Claims granted respondent's motion and dismissed the petition on the authority of *Perry v. United States*, 294 U. S.

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<sup>3</sup> Respondent first moved to dismiss the amended petition on the ground that the petitioner lacked capacity to sue. This motion was overruled (*Hartmann v. United States*, 86 C. Cls. 579), and respondent filed a general traverse. Later, by leave of court, the general traverse was withdrawn and the motion to dismiss filed (R. 19). The record does not indicate the reason for the long delay in disposition of the case (R. 19).

330, and *Perry v. United States*, 87 C. Cls. 182, certiorari denied, 305 U. S. 624 (R. 55).

#### ARGUMENT

1. The Court of Claims correctly followed the decision of this Court in *Perry v. United States*, 294 U. S. 330, that holders of gold-clause securities are not entitled to receive from the United States an amount in legal tender currency in excess of the face amount of the bonds, at least where actual damages are not proven to flow from the allegedly unconstitutional "monetary" legislation prohibiting payment in gold. Because of valid statutory restraints on the use and possession of the gold to which he alleged himself entitled under the gold-clause, Perry could prove no such damages, even after trial. *Perry v. United States*, 87 C. Cls. 182, certiorari denied, 305 U. S. 624; cf. *Bakewell v. United States*, 28 F. Supp. 504 (E. D. Mo.), affirmed, 110 F. 2d 564 (C. C. A. 8), certiorari denied, 310 U. S. 638. Petitioner's status is exactly the same. The only distinguishing allegation is that the bondholder here was an alien, resident at all times in Switzerland; but that fact is without significance. The bonds were purchased in this country (R. 2, 55), and payment was to be made here (R. 16-17, 55). Mrs. Grun and plaintiff were certainly bound by Congressional provisions as to the use and possession of gold within our territorial limits, including export restrictions (*Ling Su Fan v. United States*,

218 U. S. 302, 310-311; *Bethlehem Co. v. Zurich Ins. Co.*, 307 U. S. 265; *Uebersee Finanz-Korporation Aktien Gesellschaft v. Rosen*, 83 F. 2d 225, 230 (C. C. A. 2), certiorari denied, 298 U. S. 679; *British-American Tobacco Co., Ltd. v. Federal Reserve Bank*, 104 F. 2d 652, 654, 105 F. 2d 935 (C. C. A. 2), certiorari denied, 308 U. S. 600), and gold delivered to them in this country could not legally have been exported to Switzerland.\*

Like Perry, "plaintiff demands the 'equivalent' in currency of the gold coin promised. But 'equivalent' cannot mean more than the amount of money which the promised gold coin would be worth to the bondholder for the purposes for which it could legally be used." 294 U. S. at 357. And like Perry, plaintiff would have been required immediately to hand over to the Treasury any pre-devaluation gold dollars he might have received on redemption of the bonds, in return for the same amount of current legal tender. *Nortz v. United States*, 294 U. S. 317, 328; *Smith v. United States*, 88 C. Cls. 169; cases cited *supra*. In these circumstances, it is plain that the plaintiff and his testator could have suffered no greater damages than did Perry, Bakewell, and the other claimants whose suits have all previously failed.

2. Moreover, petitioner's claim in the court below plainly alleges that he surrendered the

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\* Petitioner does not allege that he had or could have obtained a special license to export gold to Switzerland.



bonds, pursuant to respondent's call, and received "not gold coin, but the legal tender currency of the then standard of the diminished value" (R. 8). It is settled that such a surrender, even one under protest, together with receipt of payment proffered by the Treasury, bars further suit on the obligation. *Savage v. United States*, 92 U. S. 382; *City of San Juan v. St. John's Gas Co.*, 195 U. S. 510; *Willard, Sutherland & Co. v. United States*, 262 U. S. 489, 494; *St. Louis B. & M. Ry. Co. v. United States*, 268 U. S. 169, 176. Respondent's notice of call did not require petitioner to present the bonds for payment, nor to accept payment in currency of "diminished value." *Smyth v. United States*, 302 U. S. 329, 357. He was wholly free to wait upon a change in Government policy, or to refuse payment and bring suit upon the entire obligation, as Perry had done. But with full knowledge of the respondent's *bona fide* contention that it was privileged to redeem the bonds in legal tender currency, he chose in June 1935, four months after the *Perry* decision, to surrender the instruments, apparently without protest<sup>5</sup> and to accept the tendered payment. On these allegations, *Savage v. United States*, 92 U. S. 382, is square authority for dismissal of petitioner's claim without consideration of its merits.

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<sup>5</sup> The petition alleges repeated demands for payment in gold, or its equivalent, prior to surrender, but omits any reference to protest at the time the bonds were actually offered for redemption and redeemed (R. 8).

There, the plaintiffs' testator had purchased treasury notes, in 1861, upon an advertisement stating that the obligations would be payable in gold, although the bonds themselves did not so provide. Upon maturity, the Secretary of the Treasury gave notice that the bonds would be redeemed in "lawful money," or by conversion into bonds, but not in gold. The claimant repeatedly insisted on payment in gold, but finally directed his agents to present the instruments for payment in gold, and upon refusal to accept currency under protest. As here, the plaintiff, as executrix, thereupon brought suit in the Court of Claims "to recover the difference in the market value of gold and legal-tender notes at the date of the payment." This Court, in affirming a judgment for the United States, held that "the protest of the agents did not have the effect to qualify the voluntary acceptance of the terms proposed by the secretary, and the absolute and unqualified surrender of the securities to the United States" barred the plaintiffs' claim, even though the contract may have required payment in a different money medium. 92 U. S. at 390.

3. The Joint Resolution of August 27, 1935, 49 Stat. 938, has withdrawn the consent of the United States to all suits upon gold-clause securities of the United States instituted after December 31, 1935. Petitioner admits that this is the only pending suit against respondent concerning the

gold clause legislation of 1933 and 1934, and that no others may be filed (Pet. 11).

# CONCLUSION

The decision below correctly followed the decision of this Court in the *Perry* case. There is no conflict, and the question cannot arise again. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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FEBRUARY 1947.

## APPENDIX

Public Resolution No. 10, 73d Congress, 1st Session, Chapter 48, 48 Stat. 112, approved June 5, 1933, provides as follows:

### JOINT RESOLUTION

To assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared*

to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."